

EXHIBIT E

22.0. - APPEALS

22.1. - PURPOSE

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The purpose of this section is to define circumstances under and processes by which persons may appeal (i) decisions made in administration, interpretation or enforcement of this code, and (ii) standards and requirements imposed by this code. Appeals of standards or requirements that are approved have the same effect as if the standard or requirement was met.

(Res. No. 07192005R010, Exh. A, 7-19-2005; Res. No. 05022006R001, 5-2-2006)

22.2. - APPEALS TO COUNTY COMMISSIONERS

22.2.1. - Applicability.

A. The county commissioners are authorized to hear and decide appeals where:

1. A person asserts that there is an error in any order, requirement, decision or refusal made by an administrative officer or agency in the administration or enforcement of the provisions of this code (administrative decisions) except:
 - a. The minimum setback or structure height requirements of sections 4.1.1 through 4.1.21 and 4.1.23; or
 - b. Sections 4.9.1 and 4.9.2.
2. A person asserts that the planning director has made an error in interpreting the text of this code.
3. A person proposes to deviate from a standard or requirement imposed by this code, except standards or requirements which are subject to zoning variances from the board of adjustment in section 4.6.2.
4. Appeals to the prohibition of medical marijuana centers, medical marijuana infused product manufacturers, medical marijuana optional premises cultivation operations, private marijuana clubs and appeals that would allow for the submittal of a land use application to establish those or similar marijuana-related uses not otherwise allowed in a zoning district shall not be accepted, reviewed or processed.

(Res. No. 07192005R010, Exh. A, 7-19-2005; Res. No. 01222008R001, Exh. A, 1-22-2008; Res. No. 04282009R001, Exh. A, 4-28-2009; Res. No. 05312011R019, Exh. A, 5-31-2011; Res. No. 10222013R003, Exh. A, § 12, 10-22-2013)

22.2.2. - Process.

A. Appeals of administrative decisions and planning director interpretations.

1. *Initiation of appeal.* A written application for appeal must be submitted to the planning department within 30 days of the decision or interpretation which the person believes to be in error. The planning director may grant one 30-day extension of this time limit provided that a written request for such extension is submitted to the planning director within the initial 30-day period.
2. *Contents of appeal.* The appeal must be submitted on a form provided by the planning department and must include a statement of the decision or interpretation being appealed, the date of the decision or interpretation, and facts, legal authority or other evidence that supports

the decision was in error. An application fee established by the county commissioners must be paid when the appeal is submitted.

3. *Scheduling.* Upon receipt of the appeal, the planning director will schedule the appeal on the next available agenda of the county commissioners, no later than 60 days after the date on which a properly completed notice of appeal is filed.
 4. *Notice.* Notice of the time and place of the appeal hearing must be published in a newspaper of general circulation at least ten days before the hearing date. Notice by first-class mail may be sent to property owners in the vicinity of the proposal if the planning director determines such notice is appropriate.
 5. *Action by the county commissioners.*
 - a. At the appeal hearing the county commissioners will take relevant evidence and testimony from the person who filed the appeal, the administrative officer, planning director, county staff and any interested party.
 - b. At the appeal hearing, the county commissioners will only consider the same application, plans and materials that were the subject of the original decision or interpretation, the record of that decision or interpretation and the issue raised by the person who submitted the appeal, unless the county commissioners, in their discretion, determine other evidence to be relevant and helpful. Testimony from interested parties may be considered only as it relates to the administrative officer's decision or the planning director's interpretation.
 - c. At the conclusion of the hearing the county commissioners will affirm, affirm with modifications or reverse the decision of the administrative officer or the interpretation of the planning director.
 - d. The county commissioners may refer an appeal to the planning commission for a recommendation. The decision to refer an appeal to the planning commission will be made by the county commissioners within 14 days of the date the appeal was submitted.
 6. *Burden of proof.* The decision of the administrative officer or the planning director's interpretation will not be reversed unless it is shown by a preponderance of the evidence that the decision is in error or inconsistent with the intent and purpose of this code.
- B. Appeals to deviate from standards or requirements not filed concurrently with development applications.
1. *Initiation of appeal.* For appeals to deviate from Code standards or requirements that are not filed as part of a development review application, a written application for appeal must be submitted to the planning director.
 2. *Contents of appeal.* The appeal must be submitted on a form provided by the planning department and must include a statement of the Code provision being appealed and evidence that supports the appeal, including evidence that demonstrates how section 22.2.3 or 22.2.4 review criteria for the appeal are met. The planning director may request additional information necessary to evaluate the appeal.
 3. *Scheduling.* The appeal will be scheduled for hearing within 60 days after the date on which a properly completed notice of appeal is filed.
 4. *Notice.* Notice of the time and place of the appeal hearing must be published in a newspaper of general circulation at least ten days before the hearing date. Notice by first-class mail may be sent to property owners in the vicinity of the proposal as determined by the planning director.
 5. *Action by the county commissioners.*
 - a. At the hearing the county commissioners will take relevant evidence and testimony from the person who filed the appeal, county staff and any interested party.
 - b. At the conclusion of the hearing, the county commissioners will approve, approve with conditions or deny the appeal.

- c. All appeals to the board of county commissioners will be reviewed by the planning director who will determine whether the appeal will be referred to the planning commission for recommendation prior to a county commissioners' hearing on the appeal.
 - 6. *Burden of proof.* The appeal will be granted only if the applicant shows by a preponderance of the evidence that granting the appeal will be consistent with the intent and purpose of this Code.
- C. Appeals to deviate from standards or requirements filed concurrently with development review applications.
 - 1. *Initiation of appeal.* For appeals to deviate from Code standards or requirements that are filed as part of a development review application, a written application for appeal must be submitted to the planning director.
 - 2. *Contents of appeal.* The appeal must be submitted on a form provided by the planning department and must include a statement of the Code provision being appealed and evidence that supports the appeal, including evidence that demonstrates how the section 22.2.3 or 22.2.4 review criteria for the appeal are met. The planning director may request additional information necessary to evaluate the appeal.
 - 3. *Scheduling.* The appeal will be heard at the same time as the development review application.
 - 4. *Notice.* Notice of the time and place of the appeal hearing must be published in a newspaper of general circulation as part of the notice of the development review application. Notice by first-class mail may be sent to property owners in the vicinity of the proposal as determined by the planning director with the notice of development review.
 - 5. *Action by the county commissioners.*
 - a. At the hearing, the county commissioners will take relevant evidence and testimony from the person who filed the appeal, county staff and any interested party.
 - b. At the conclusion of the hearing, the county commissioners will approve, approve with conditions or deny the appeal. The county commissioners will make separate findings and take separate action on each appeal before taking action on the development proposal.
 - c. Appeals of Code standards or requirements submitted concurrently with a development review application will be reviewed by the planning commission, when appropriate, along with the development proposal.
 - 6. *Burden of proof.* The appeal will be granted only if the applicant shows by a preponderance of the evidence that granting the appeal is consistent with the intent and purpose of this code.

(Res. No. 07192005R010, Exh. A, 7-19-2005; Res. No. 09122006R002, Exh. A, 9-12-2006; Res. No. 10282008R004, Exh. A, 10-28-2008)

22.2.3. - Review criteria for appeals to deviate from standards or requirements other than minimum lot size requirements.

When considering whether to approve an appeal to deviate from standards or requirements of this Code, other than minimum lot size requirements, the county commissioners may grant the appeal subject to safeguards and conditions consistent with their findings concerning the following factors. The county commissioners will consider each of the following factors and make findings pertaining to each one which, in their discretion, applies to the appeal:

- A. Approval of the appeal will not subvert the purpose of the standard or requirement.
- B. Approval of the appeal will not be detrimental to the public health, safety or property values in the neighborhood.
- C. Approval of the appeal is the minimum action necessary.

- D. Approval of the appeal will not result in increased costs to the general public.
- E. Approval of the appeal is consistent with the intent and purpose of the Code.

(Res. No. 07192005R010, Exh. A, 7-19-2005)

22.2.4. - Review criteria for appeals to deviate from minimum lot size requirements.

When considering whether to approve an appeal to deviate from the minimum lot size requirements of this code, the county commissioners may grant the appeal subject to safeguards and conditions consistent with their findings concerning the following factors. The county commissioners will consider each of the following factors and make findings pertaining to each one, which in their discretion, applies to the appeal:

- A. The lot size being proposed is consistent with the pattern of existing lots in the neighborhood.
- B. The proposed lot has sufficient area to support the intended use of the lot.
- C. There are physical features of the site or other special circumstances that support the proposed lot size.
- D. Granting the lot size appeal is consistent with the intent and purpose of this code.

(Res. No. 07192005R010, Exh. A, 7-19-2005)

22.2.5. - Appeals from section 10 (signs).

To approve an appeal from the applicable requirements in section 10 of this code the county commissioners must consider the following review criteria and find that each criterion has been met or determined to be inapplicable:

- A. Approval of the appeal is consistent with the purpose and intent of this code;
- B. There are extraordinary or exceptional conditions on the site which would result in a peculiar or undue hardship on the property owner if section 10 of this code is strictly enforced;
- C. Approval of the appeal would not result in an economic or marketing advantage over other businesses which have signs which comply with section 10 of this code.

(Res. No. 05022006R001, 5-2-2006)

22.3. - APPEALS TO THE BOARD OF ADJUSTMENT

22.3.1. - Applicability.

- A. The board of adjustment is authorized to hear and decide appeals where:
 - 1. A person is aggrieved by his/her inability to obtain a building permit as a result of an error by an administrative officer or agency in the administration or enforcement of:
 - a. The minimum setback or maximum structure height requirements of sections 4.1.1 through 4.1.21 and 4.1.23; or
 - b. Sections 4.9.1 and 4.9.2
 - 2. An officer, department, board or bureau of the county is affected by the grant or refusal to grant a building permit as a result of an error by an administrative officer or agency in the administration or enforcement of:

- a. The minimum setback or maximum structure height requirements of sections 4.1.1 through 4.1.21 and 4.1.23; or
 - b. Sections 4.9.1 and 4.9.2.
- 3. A person asserts that there is an error in any order, requirement, decision or refusal made by an administrative officer or agency in the administration or enforcement of:
 - a. The minimum setback or maximum structure height requirements of sections 4.1.1 through 4.1.21 and 4.1.23; or
 - b. Sections 4.9.1 and 4.9.2.
- B. All appeals of the planning director's interpretations of the provisions of this code are expressly reserved to the county commissioners.

(Res. No. 04292003R005, 4-29-2003; Res. No. 07192005R010, Exh. A, 7-19-2005; Res. No. 01222008R001, Exh. A, 1-22-2008; Res. No. 04282009R001, Exh. A, 4-28-2009)

22.3.2. - Process.

- A. *Initiation of appeal.* A written application must be submitted to the planning department within 30 days of the order, requirement, decision or refusal made by the administrative official or agency. The application must be on a form provided by the planning department. A fee established by the county commissioners must be paid when the appeal is submitted.
- B. *Scheduling.* Upon receipt of the application, the planning director will schedule a hearing before the board of adjustment no later than 60 days after receipt of the application (see Table 12.3.I).
- C. *Notice.* Notice of the time and place of the appeal hearing must be published in a newspaper of general circulation at least ten days before the hearing date. Notice by first-class mail must be sent to property owners in the vicinity of the proposal as determined by the planning director.
- D. *Action by the board.* At the appeal hearing, the board of adjustment will take relevant evidence and testimony from the appellant, the administrative officer or agency and any interested party. At the conclusion of the hearing, the board of adjustment will affirm, affirm with modifications or reverse the determination made by the administrative officer or agency. A concurring vote of four members of the board of adjustment is necessary to reverse any order, requirement, decision, or refusal of the administrative official or agency or to decide in favor of the appellant.
- E. *Burden of proof.* An order, requirement, decision or refusal of the administrative officer or agency shall not be reversed unless the appellant shows by a preponderance of the evidence that such order, requirement, decision or refusal is erroneous.

(Res. No. 07192005R010, Exh. A, 7-19-2005; Res. No. 10282008R004, Exh. A, 10-28-2008)

22.4. - APPEALS FROM DECISIONS OF THE FLOODPLAIN REVIEW BOARD

22.4.1. - Applicability.

Any person aggrieved by a decision of the floodplain review board can appeal the decision to the county commissioners.

(Res. No. 07192005R010, Exh. A, 7-19-2005)

22.4.2. - Process.

- A. Appeals may be initiated by filing a notice of appeal with the county commissioners within 30 days after the date of the floodplain review board decision and paying any applicable fees.
- B. Upon receiving notice of appeal, the county commissioners will set a date for hearing the appeal no sooner than 30 days and no later than 60 days after receipt. Written notice of the appeal designating the date, time, and place of the hearing along with the appellant's name must be mailed to the appellant (and to the applicant if the appellant is someone other than the applicant) at least 14 days prior to the hearing. Notice of the date, time, and place of the hearing must also be published in a newspaper of general circulation in Larimer County at least 14 days prior to the hearing.
- C. At the appeal hearing, the county commissioners will take relevant evidence and testimony from the appellant and from any other interested party or person. At the conclusion of the hearing, the county commissioners will affirm, affirm with modifications or reverse the decision made by the floodplain review board.
- D. A decision of the floodplain review board shall not be reversed unless the appellant shows by a preponderance of evidence that the decision is in error or inconsistent with this Code.

(Res. No. 07192005R010, Exh. A, 7-19-2005)